

UNITED STATES
Department of the Interior
Bureau Of Reclamation

Central Valley Project, California

Contract for Purchase of Miller & Lux Water Rights

1. THIS CONTRACT, made this 27th day of July, 1939, pursuant to (a) Act of Congress, approved June 17, 1902, (32 Stat. 388) and Acts amendatory thereof and supplementary thereto, all of which Acts are commonly known and referred to as the Reclamation Law; (b) Act of Congress, approved April 8, 1935, (49 Stat. 115), designated the Emergency Relief Appropriation Act of 1935; (c) Act of Congress, approved June 22, 1936 (49 Stat. 1597), designated the First Deficiency Appropriation Act, fiscal year 1936; (d) Act of Congress, approved August 9, 1937 (50 Stat. 564), designated the Interior Department Appropriation Act 1938; (e) Act of Congress, approved August 26, 1937 (50 Stat. 844), entitled "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes"; and (f) Act of Congress, approved May 9, 1938 (Public No. 497, 75th Congress, third session), between THE UNITED STATES OF AMERICA, hereinafter referred to as "United States", acting for this purpose by _____, Secretary of the Interior, and MILLER & LUX INCORPORATED, a corporation organized and existing under the laws of the State of Nevada, and GRAVELLY FORD CANAL COMPANY, a corporation organized and existing under the laws of the State of California, and having their principal offices at San Francisco, California, hereinafter referred to as "venders";

W I T N E S S E T H

2. WHEREAS, the United States contemplates the construction on and in the San Joaquin River at a point or points upstream from Friant, Fresno County, California, of a dam or dams and diversion works for the storage and diversion of certain of the waters of the San Joaquin River (which dam or dams and works are hereinafter collectively called Friant Dam), a feature of the Central Valley Project, California; and

3. WHEREAS, the Vendors are severally the owners of certain rights to appropriate, divert and use the waters of the San Joaquin River and Fresno Slough, at times a tributary of said river, in the irrigation of land, the watering of livestock, and for other purposes, and said Miller & Lux Incorporated is the owner of lands situate in Fresno, Madera, Merced and Stanislaus Counties, California, which lands border upon and are riparian to either the San Joaquin River or Fresno Slough, or both and to various channels and sloughs which naturally carry a portion of the waters of said river, and all of which said lands and canals are downstream from the said Friant dam site; and

4. WHEREAS, Miller & Lux Incorporated, and certain affiliated companies not parties to this contract, are the owners of certain rights to the use of waters of the San Joaquin River and Fresno Slough, including rights by appropriation and riparian rights, the waters appertaining to which rights are now being used and applied primarily for the irrigation of certain lands devoted to the cultivation of crops of various kinds, which said rights are herein referred to as "crop land rights"; and

5. WHEREAS, the waters appertaining to certain of said rights owned by Vendors, including appropriative rights, hereinafter sometimes referred to as "grass land rights", and riparian rights, are now being used and applied primarily for the irrigation of certain pasture lands; and

6. WHEREAS, the United States desires to acquire from Vendors all of their rights as hereinafter provided; and

7. WHEREAS, Vendors are willing to sell and convey to the United States said grass land and riparian rights as herein provided, and as against the United States to estop themselves from claiming any waters of the San Joaquin River, either surface or underflow, or any right therein or thereto, excepting only crop land water to be reserved to and for the use of said affiliated companies;

8. NOW, THEREFORE, it is agreed by and between the parties hereto as follows, to wit:

Covenants to convey - Schedule of Mandatory Releases

9. (a) The Vendors agree, and each of them agrees, subject to all of the provisions of this contract, to grant, bargain, sell, convey and confirm unto the United States, its successors and assigns forever, the right as against them, and each of them, their successors and assigns, and as against the lands, canals and other properties of Vendors, the right to divert, store and use, by means of said Friant Dam, diversion works, or other works, perpetually, each and every year, from and after the delivery of the deed and deed of reconveyance and the payment of the purchase price as hereinafter provided, all the waters of the San Joaquin River, as they would flow in the absence of operations of the United

States, in excess of the aggregate 24-hour mean flows thereof in cubic feet per second, as specified in Schedules One (1) and Two (2) as set forth in this paragraph, measured at Whitehouse gauging station, decreased by upstream diversions of water reserved in said schedules by the beneficiaries thereof mentioned in Subdivisions (c) and (d) of this article;

MEAN 24-HOUR FLOW IN CUBIC FEET PER SECOND

Month	Schedule 1	Schedule 2
January	372	28 plus Chowchilla Canal Water Right
February	495	40 ditto
March	1,242	68 ditto
April	1,837	113 ditto
May	2,144	141 ditto
June	2,291	159 ditto
July	2,316	159 ditto
August	2,099	111 ditto
September	1,267	68 ditto
October	620	40 ditto
November	445	40 ditto
December	372	28 ditto

also all rights of Vendors, and each of them, in and to the use of Kings River water flowing in said Fresno Slough.

Chowchilla Canal Water Right

The chowchilla Canal Water Right referred to in said Schedule Two (2) has been agreed to be as between said Venders and Chowchilla Farms, Inc., the owner of said Chowchilla Canal, its successors and assigns, the right to take and divert from the San Joaquin River, into Lone Willow Slough in Section 25, Township 13 South, Range 15 East,

M. D. B. & M., and thereafter into the Chowchilla Canal, up to but not exceeding 120 cubic feet of water per second at all times when there is flowing in said river, above any diversions of the said Vendors and persons and corporations expressly consenting to the terms of this agreement, such quantity of water in excess of 775 cubic feet per second, exclusive of water released from storage by the said Southern California Edison Company, Ltd. and the said San Joaquin Light & Power Company, or either of them, their successors and assigns; provided that if less than 120 cubic feet of water per second is flowing in said river in excess of said stage of 775 second feet, exclusive of power released water, during the period March 1st to November 1st each year, then said Chowchilla Farms, Inc. may divert one-half of said power released water when flowing in said river during said period, between flow stages of 775 and 895 cubic feet per second, but in no event more than 60 second feet of said power released water, and provided further, that the total diversion at any time through said Chowchilla Canal shall not exceed 120 cubic feet of water per second.

(b) As employed by the parties to this contract, the term "flow" whether in the singular or plural, when used in relation to the flow of the San Joaquin River, means the natural flow as modified by operations under contracts referred to in Article II hereof.

(c) It is understood and agreed that The San Joaquin & Kings River Canal & Irrigation Company, Incorporated, the Columbia Canal Company, the Firebaugh Canal Company and the San Luis Canal Company are the owners

of the rights to the use of the waters embraced in Schedule One (1) hereof, and that this contract is made for the benefit of said named companies in respect to the water owned by them, and shall be construed as a contract on the part of the United States in favor of said companies in respect to the waters embraced in said Schedule One (1) to which they are each respectively entitled. It is also understood that certain waters to be furnished to a State game refuge of approximately 3,000 acres of land purchased by the State of California, as set forth in a deed dated April 29, 1929, from Miller & Lux Incorporated and San Luis Canal Company (recorded September 30, 1929, in the office of the County Recorder of the County of Merced, State of California, in Volume 267, Official Records, at page 82, Merced County Records, are included in Schedule One (1).

It is agreed that when and at such times as the flow stated in Schedule One (1) exceeds actual uses on crop land areas and on the said State Game refuge, served by the beneficiaries of Schedule One (1), then the United States may reduce the flow at Whitehouse gauging station to the amount of such actual use plus the requirements under Schedule Two (2).

(d) It is further understood and agreed that the quantities of water set forth in said Schedule Two (2) of this Article are intended for the purpose of supplying the actual diversions of the Tranquility Irrigation District and the James Irrigation District, and all persons firms or corporations (other than Vendors) having the right to divert or use waters of the San Joaquin River from Fresno Slough, and also for the purpose of supplying the requirements of the Chowchilla Canal water

right, and all other diversions from the San Joaquin River between Whitehouse gauging station and Mendota Dam, except diversions made for or by the beneficiaries of said Schedule One (1), or any of them.

(e) The said quantities of water set forth in Schedule Two (2) are the quantities estimated by the parties hereto as sufficient to satisfy the rightful diversions of said users and diverters referred to in paragraph (d) of this Article. If, however, the quantities of water provided in said Schedule Two (2) shall be found inadequate to supply the rightful diversions of said users and diverters, the United States agrees that the amounts set forth in said Schedule Two (2) shall be increased in such amounts as will satisfy such rightful diversions, including the Chowchilla Canal water right; provided, if the said quantities of water as specified in said Schedule Two (2) shall be found to be in excess of the respective quantities necessary to supply said rightful diversions, it is mutually agreed that said amounts set forth in said Schedule Two (2) may be decreased by the amount of such excess.

(f) The Vendors, and each of them, agree that upon receiving written notice from the United States they will take and use all lawful means at their disposal, including the commencement, prosecution or defense, as the case may be, of all actions or suits at law or in equity necessary or proper for the prevention of hostile, adverse, excessive or unreasonable diversions or appropriations of water of said San Joaquin River below Friant dam site and above Temple Slough,

also from said Fresno Slough so far as the waters of said Fresno Slough are supplied by the flow of the San Joaquin River. The cost of any such suit or action shall be borne by the Vendors, but only until the United States shall have constructed said Friant Dam and other works, and until the United States shall be physically able to divert and store said waters therein or otherwise beneficially use said waters, but in no event exceeding a period of five (5) years from and after the date of delivery of the deed and deed of reconveyance herein provided for; but regardless of the outcome of such suits or actions it is agreed that the provisions of paragraphs (c), (d) and (e) of this Article shall obtain.

10. (a) The United States agrees to install, operate, and maintain such equipment, and make such computations as may be necessary to maintain an accurate and continuous record of the flow of San Joaquin River as it would be in the absence of the operation of Friant Dam and other works.

(b) Miller & Lux Incorporated agrees to install, operate and maintain such equipment and make such computations as may be necessary to maintain an accurate, complete and continuous record of the flow of San Joaquin River immediately above the heading of Lone Willow Slough at or near the present Whitehouse gauging station, and of diversions by the Vendors above said Whitehouse gauging station.

(c) The equipment and methods used in securing such records of stream flow and diversions shall be mutually satisfactory to the Chief Engineers of the Bureau of Reclamation and Miller & Lux Incorporated.

(d) Authorized agents of either party shall have access at all reasonable times to recorder stations and during office hours to records and computations pertaining thereto, referred to in subdivisions (a) and (b) of this article, and either party shall, upon request of the other, furnish copies of records and computations.

(e) The Vendors agree and consent that the United States may enter upon lands owned or controlled by them to prevent or diminish overflow.

(f) Vendors will upon request furnish the United States with copies of data received by them on power storage operations.

(g) The United States shall provide outlet capacity at Friant Dam adequate to pass waters reserved under Schedules One (1) and Two (2) at all stages of water-level back of said dam.

POWER COMPANIES' CONTRACTS

11. (a) Certain contracts exist between Miller & Lux Incorporated and the Southern California Edison Company, Ltd. and its predecessors in interest, of dates: August 17, 1906, and supplemental contract of the same date; June 14, 1909; February 21, 1916; October 3, 1916; August 16, 1918; April 27, 1920; November 2, 1922; February 11, 1924, October 7, 1924; December 3, 1925; April 25, 1928; July 19, 1933; and November 25, 1936; and certain contracts exist between Miller & Lux Incorporated and the San Joaquin Light & Power Corporation, and its predecessors in interest, of dates: June 14, 1909, and September 16, 1919; which contracts define the stages of the San Joaquin River at which said Power Corporations are permitted to store waters of said river and certain of its tributaries. The vendors covenant and agree that they will not

hereafter enter into any contract or understanding or arrangement with said Power Corporations, or with any one else, agreeing to or consenting to any storage or release from storage of the waters of said river upstream from Friant dam site, in addition to or different from the storages and releases authorized and provided for in said contracts above mentioned, without the written consent of the United States first had and obtained.

It is agreed that all rights, interest, benefits and privileges which Vendors now possess or own by reason of said storage and power release contracts in this Article referred to, certified copies of which are herewith delivered to the United States, are included in the rights herein agreed to be conveyed to the United States, provided always, that said rights, privileges or benefits shall not at any time be exercised by the United States so as to diminish the water supply of the beneficiaries of Schedule One (1).

The present rights and obligations of said Power Companies to store and release water are agreed to be as follows:

PRESENT RIGHTS AND OBLIGATIONS OF THE
SOUTHERN CALIFORNIA EDISON COMPANY, LTD.
TO STORE AND RELEASE WATER.

(a) No waters of Big Creek, Mono Creek, Bear Creek, Pitman Creek, or the South Fork of the San Joaquin River shall be diverted, stored or impounded in Huntington Lake, Florence Lake or Shaver Lake reservoirs by the Southern California Edison Company, Limited, without the written consent of Miller & Lux Incorporated, when the amount of water in the said San Joaquin River at a measuring station on said river now established and in use, situate in Section 10, Township 10 South, Range 22 East, M. D. B. & M., is flowing at a less rate than that set opposite those certain months of the year as follows:

December	2000 cubic feet per second
January	2000
February	2200
March	2500
April	2800
May	2900
June	3000
July	3000
August	3000
September	3000
October	3000
November	3000

and no water flowing in Stevenson Creek shall be diverted, stored or impounded in Shaver Lake reservoir when the amount of water in said river at said point of measurement is flowing during certain months of the year at a rate less than as follows:

October	1500 cubic feet per second
November	1500
December	1500
January	1500
February	1500
March	1500
April 1 to 15, inc.	1500
April 16 to 30 inc.	2800
May	1900
June	3000
July	3000
August	3000
September	3000

(b) Not more than 60 per cent of the aggregate capacity of all reservoirs shall be held in storage after the first day of November in any year, nor more than the following percentages on the first day of each succeeding month; December, 50 per cent; January, 40 per cent; February 30 per cent; March, 25 per cent; April, 20 per cent; and not more than 15 per cent by the fifteenth of April.

PRESENT RIGHTS AND OBLIGATIONS OF THE
SAN JOAQUIN LIGHT & POWER CORPORATION
TO STORE AND RELEASE WATER

(a) No water flowing in the North Fork of the San Joaquin River or its tributaries shall be impounded in any reservoir of the San Joaquin Light & Power Corporation without the written consent of Miller & Lux Incorporated during the months of April, May, June, July and August of any and every year when the water

in the San Joaquin River at Whitehouse Measuring Station is flowing at a rate less than 3,000 cubic feet per second, or during the months of September, October, November, December, January, February and March of any and every year when the water in the river at Kerckhoff Power Plant is flowing at a rate of less than 1500 cubic feet of water per second, provided that in ascertaining the right of the Power Company to store the waters of the North Fork of said river, any waters stored by others under contract with Miller & Lux Incorporated above the point where said North Fork enters said river (except the waters of Big Creek stored in Huntington Lake) and any water diverted below said point and above Whitehouse gauging station shall be taken into account by adding such stored and diverted water to the river flow in determining the amount of water flowing in said river at said points of measurement, or at any point of measurement hereafter agreed upon by the Power Company and Miller & Lux Incorporated or its successors and assigns.

(b) Not more than 60% of the capacity of said reservoirs shall be held in storage between the 15th day of September and the 1st day of October in any year; not more than 50% of said capacity shall remain in storage on or after the first days of the months of November, December and January; all water in storage in excess of said percentages shall be turned down to Miller and Lux Incorporated for its use and benefit.

The Vendors covenant that they have entered into no contracts now subsisting providing for the storage or release of the waters of said San Joaquin River, other than as hereinabove specified and defined.

It is understood and agreed that in respect to the waters embraced in Schedule One (1) hereof, the Firebaugh Canal Company, San Luis Canal Company, Columbia Canal Company and the San Joaquin & Kings River Canal & Irrigation Company, Incorporated, or any of them, may annually arrange for the storage and release of not to exceed 50,000 acre-feet in the aggregate, of said waters, with either of said Power Companies, and the same shall not constitute a violation of this contract, but in the event of such storage of Schedule One (1) waters, the flow at Whitehouse gauging station under Schedule One (1) shall, during the period of such

storage accumulation, be reduced by the amount thereof. It is further understood and agreed that the agent of the United States in charge of Friant reservoir shall be given notice of such intended storage of Schedule One (1) water at least seven (7) days prior to such storage.

TRANSFER OF APPROPRIATION AND CHANGE OF PLACE
OF USE - ASSIGNMENT

12. (a) The Vendors, and each of them, agree to transfer and convey their right, title and interest in and to the waters of said San Joaquin River and Fresno Slough, and their rights to the use thereof, particularly described in Article Nine (9) hereof, subject to all of the terms and conditions of this contract, including in said conveyance all rights of the Vendors, whether by appropriation, prescription or adverse use, or otherwise, or as owners of riparian land or rights reserved upon the sale of riparian lands, to divert and use said waters so agreed to be transferred and conveyed; provided, however, that nothing herein contained shall be construed as an extinguishment, severance, abandonment, or waiver of the riparian rights of Vendors, or any of them, or as a conveyance of their riparian rights, or as otherwise affecting the said rights in any respect whatsoever, except as to and in favor of the United States.

(b) The Vendors, and each of them, agree to assign, transfer and set-over to the United States their right, title and interest in and to all contracts, judgments and decrees, filings before the Division of Water Resources of the Department of Public Works of the State of California, and appropriations, so far as the same are necessary to enable

the United States to use and enjoy the rights herein agreed to be so conveyed by the Vendors to the United States. The Vendors, as against themselves and each of them, agree and consent that the United States may use, store and divert the waters of said river for use within or without the watershed of the San Joaquin River, notwithstanding that the Vendors have heretofore used said waters.

(c) The said rights herein agreed to be conveyed shall be deemed easements in the lands, canals, water rights and other real properties owned by the Vendors in said Fresno, Madera, Merced and Stanislaus Counties, California, and in any other lands owned by the said Vendors, or any of them, and affected by the proposed operations of the United States. The covenants and agreements of the Vendors, and each of them, in respect to storage, diversion or use of waters shall be deemed covenants running with and binding the said lands, canals, water rights and other real properties of the Vendors, their successors or assigns, or any of them, made for the benefit of the United States, its successors and assigns, and for the benefit of the water rights herein agreed to be conveyed and all properties and works of the United States constructed or to be constructed in connection with or related to the storage, diversion, or use of waters under said water rights.

(d) Miller & Lux Incorporated hereby covenants and agrees that no corporation in which it owns any stock, or over which it has or exercises any control, has any right, title or interest in or to the property and property rights herein agreed to be conveyed, save and except the Vendors hereto.

PAYMENT OF PURCHASE PRICE AND CONVEYANCE OF PROPERTIES

13. The Vendors shall, within fifteen (15) days after notice of the execution of this contract by the United States, execute and deliver to the United States a deed, in the form annexed hereto and marked Exhibit "A", duly executed and acknowledged by the Vendors, conveying to the United States all of the property and property rights herein agreed to be conveyed, together with a deed of reconveyance from The Bank of California, N.A., as Trustee, wherein and whereby said Trustee shall reconvey to Miller & Lux Incorporated, a corporation, all of the water rights, or rights to the use of water, and other rights or properties, herein agreed to be transferred and conveyed to the United States, free and clear of the lien of that certain Trust Indenture dated the first day of October, 1925, wherein Miller & Lux Incorporated was Trustor and the said The Bank of California, N. A. was Trustee. The United States shall purchase said water rights, or rights to the use of water, and other rights and properties herein agreed to be conveyed on the terms herein expressed, and upon execution and delivery of said deed and said deed of reconveyance, it shall cause to be paid to the Vendors as full purchase price and full payment for all damages for taking possession of said rights and for entry upon said property, and damages resulting from the construction, operation and maintenance of said Friant Dam and other works to utilize such rights, the sum of Two Million, Four Hundred and Fifty Thousand Dollars (2,450,000.00), of which sum \$1,938,650.00 shall be paid to Vendors and \$511,350.00 thereof shall be deposited in escrow, within the period as hereinafter in Subdivision (e) of Article 14 of this contract provided.

If said sum of \$1,938,650.00 shall not be paid to said Vendors and said sum of \$511,350.00 shall not be deposited in escrow within sixty days from and after execution and delivery of said deed and deed of reconveyance and the signing of the usual Government vouchers therefor, the Vendors may at their option, and at such times as they may so desire, declare this contract terminated and ended, whereupon all rights and obligations of the parties hereunder shall terminate and thereupon the United States shall deliver up to Vendors for cancellation said deed and said deed of reconveyance. Said termination by said Vendors of this contract shall be affected by depositing a written notice of exercise of such option in the United States Post Office, in the City of San Francisco, State of California, postage prepaid, directed to the Secretary of the Interior, Washington, D. C.

In construing the provisions of this Article it is agreed that time is of the essence thereof.

Pending Litigation and Obligations prior to Completion of Dam

14. (a) It is agreed that from and after the execution of this contract, and until the execution and delivery of the deed and deed of reconveyance herein provided for, or until the termination and cancellation, or termination or cancellation, of this contract as herein provided, the Vendors will at all times protect and defend, at their own cost and expense, the title to all the property and water rights herein agreed to be conveyed against the claims of all third parties. At all times from and after the delivery of said deed and deed of reconveyance

herein provided for, until the United States shall have constructed said Friant Dam and diversion works, and until the United States shall be physically able to divert and store said waters therein, or otherwise beneficially use said waters, but in no event exceeding the period of five (5) years from and after the date of said deed and deed of reconveyance herein provided for, the Vendors, and each of them, agree, at their sole cost and expense, to divert and beneficially use in their customary manner, or cause to be so diverted and so beneficially used, all waters the rights to the use of which they have herein agreed to convey; that during said period they will prevent the appropriation and diversion of any of said waters by any and all third parties as far as they are legally able to do so, and in case of such invasion or threatened invasion to take at their sole cost and expense, and on behalf of and for the benefit of the United States, all legal steps and proceedings necessary for the protection of said rights against adverse and hostile invasion, to the end that no property right or rights which they shall convey to the United States pursuant to this agreement shall be lost or impaired by their inaction, negligence or acquiescence; and that Vendors will at all such times keep the United States duly informed as to any and all invasions or threatened invasions of such water rights or property which shall come to their knowledge, and also of all legal or equitable actions or proceedings brought by or against them, or any of them, involving said water rights, or the Vendors' interests or title therein or thereto.

(b) Certain suits in law or equity wherein the Vendors, or some of them, are parties litigant, and which purport to affect the water rights

herein agreed to be conveyed, are pending. The Vendors agree to prosecute said actions wherein they, or any of them, are plaintiffs, and to defend such other of said actions all at their own expense at all times from and after the execution of this contract, until the United States shall have constructed said Friant Dam, and until the United States shall be physically able to divert and store said waters therein, or otherwise beneficially use said waters, but in no event to exceed a period of five (5) years from and after the date of delivery of the deed and deed of reconveyance herein provided for.

(c) Certain proceedings in eminent domain are pending, wherein Fresno Irrigation District is the plaintiff and condemnor, and Miller & Lux Incorporated is a defendant, and the Gravelly Ford Canal Company, Columbia Canal Company, San Luis Canal Company, Firebaugh Canal Company, and Santa Rita Irrigation Company, are defendants in one or more of the same. Said actions are pending in the Superior Court of the State of California, in and for the Counties of Fresno, Madera, Merced and Stanislaus, and are numbered in the files of said counties, respectively, as follows: No. 4371, Madera County; No. 4372, Madera County; No. 8694, Merced County; No. 8695, Merced County; No. 47162, Fresno County; No. 47,163, Fresno County; No. 14,409, Stanislaus County; No. 14,410, Stanislaus County; No. 53,759, Fresno County; No. 5023, Madera County; No. 10,958, Merced County; and No. 17,607, Stanislaus County.

(d) It is understood and agreed by and between the parties hereto that the Vendors shall assume any and all cost and expense of defending, and shall defend, said condemnation proceedings, at their own expense.

In the event a final judgment in condemnation shall be rendered in any of said proceedings, and said final judgment shall impair any of the rights herein agreed to be conveyed by the Vendors to the United States, the Vendors agree to assign to the United States, to the extent of such impairment, any award of compensation to the Vendors, or either of them, which may be provided for in said final judgment.

(e) Of the sum of \$2,450,000.00, payable to Vendors as provided by this Contract, the sum of \$1,938,650.00 shall be paid unconditionally within sixty days after the delivery of the deed as provided by this contract. The remainder of said sum, to-wit, \$511,350.00, shall within said period of sixty days be deposited with such escrow agent as may be selected by the Secretary of the Interior, to be then invested by said escrow agent, at current open market prices, in such Federal securities as may be agreed on between the Secretary of the Interior and the Vendors, and thereafter said securities shall be held in escrow on the terms and conditions herein provided.

There is delivered herewith to each of the parties hereto, and as a part of this Contract, a duplicate original of a map marked Exhibit "B" and entitled "BUREAU OF RECLAMATION, UNITED STATES DEPARTMENT OF THE INTERIOR, CENTRAL VALLEY PROJECT" - Map showing grass lands and riparian lands basic to contract between the United States, and Miller & Lux, Inc. and Gravelly Ford Canal Company, dated 1939 and identified by the signatures of the respective parties hereto, upon which are delineated certain lands in this contract referred to as "Grass Lands" and as "Riparian Lands". The boundaries of said Grass Lands outlined in green and the boundaries of the Riparian Lands are outlined

in orange. Said map need not be recorded.

In event final judgements are entered by a court of competent jurisdiction in actions at law or suits in equity initiated prior to the sixth anniversary after the initial storage or diversion of said waters of the San Joaquin River by the United States by means of Friant Dam, diversion works, or other works, wherein it is adjudged that the owners of the lands, or any of them, described in said Exhibit "B", are by reason of such storage or diversion deprived of water which they are lawfully entitled to use on said lands, and the United States makes compensation therefor, then the United States shall be paid out of said escrow an amount equal to the damage per acre for each acre of said land adjudicated by such judgment to be so deprived of water, but not to exceed \$9.00 per acre for said riparian lands and \$13.00 per acre for said grass lands.

In the event final judgments or decrees are entered by a court of competent jurisdiction, in suits initiated within the period last above described, wherein the United States or its officers, agents, or employees, by reason of a paramount right as against it to the use of any of said waters on said lands, or any of them, delineated on said Exhibit "B", are permanently enjoined from impounding or diverting any of said waters by said means, then the United States shall be paid out of said escrow an amount equal to \$9.00 per acre for each acre of said riparian lands and \$13.00 per acre for each acre of said grass lands, which by said judgments are decreed to be entitled to receive such water from the San Joaquin River; PROVIDED, that the total obligation of Vendors under this subdivision (e) of Article 14 shall not exceed but shall be limited

to the principal of funds or securities so escrowed, exclusive of costs incidental to said escrow.

IT IS AGREED AND UNDERSTOOD that there shall be no payment out of said escrow as a result of final judgments or decrees entered by the consent of the United States, or as the result of failure by the United States to defend said actions or to appeal said actions, unless said judgments or decrees are entered or permitted to be entered with the consent of the Vendors.

No part of the escrow fund herein provided for shall be used to pay costs, expenses, or attorneys' fees incurred in defense of said suits and actions referred to in this subdivision (e) of Article 14, it being understood and agreed that the United States and Vendors shall each pay its costs, expenses and attorneys' fees, if any, incurred in said litigation.

Payment out of the escrow shall be made annually at or within thirty days after the end of each calendar year, each payment to cover all final judgments or decrees as above described entered during each said year. Payment shall be made by the delivery by the escrow agent to the Secretary of the Interior, or his authorized representative, of securities equal to the amount then owing to the United States, or as near thereto as possible considering the basic units of the securities in escrow. For this purpose, securities delivered shall be valued at the current market values thereof.

When final judgments in all suits above described have been entered and payment therefor made as herein provided, or such suits

have been finally dismissed, the balance of securities remaining in the hands of the escrow agent shall be delivered to the Vendors. Final adjustment shall then also be made to cover discrepancies between amounts actually owing to the United States hereunder, and amounts actually paid by the periodic delivery of securities.

Interest accrued on securities remaining in escrow on any interest maturity date shall become the property of the Vendors, and the escrow agent shall at such times deliver the matured coupons to the Vendors. The costs of the escrow shall be borne by the Vendors.

The escrow agent shall reinvest the principal of escrowed securities that mature or are retired during the life of the escrow, in such Federal securities as are designated by the parties hereto.

(f) The Vendors, and each of them, agree to preserve and keep intact existing records owned by them comprising gauge recorder charts, gauge height record reports, current meter notes, discharge computations, stage discharge relation curves, original tabulations of daily discharges on river gauging stations and on key stations on canals and wasteways, records of areas irrigated and computations showing the segregation of crop and grass land deliveries where diversions are made through common headings, in so far as these bear on the title to the water rights agreed to be conveyed to the United States by this Contract, and to keep adequate similar records concerning the diversion and beneficial use of water that is required to be made by them under Article 14 (a) of this Contract. It is further agreed that such records shall be available for inspection by authorized agents of the United States

at all reasonable times, or for use of such agents as may be reasonably necessary in prosecuting or defending actions involving title to the water rights covered by this contract.

The obligations of this Subdivision shall continue during the period the Vendors are required to protect the title as provided in Articles 9 (f) and 14(a) of this Contract, and shall continue thereafter as to all such records as are not turned over to the United States, it being understood that the United States will at any time accept delivery of said records from Vendors.

COVENANT BY UNITED STATES

15. The United States covenants and agrees that it will never assert or claim that it has acquired, by reason of any violation or violations, continuous or intermittent, of the terms of this contract in reference to storage or diversion of water, the right as against Vendors and Columbia Canal Company, Firebaugh Canal Company, San Luis Canal Company and the San Joaquin & Kings River Canal & Irrigation Company, Incorporated, to store or divert the waters of said San Joaquin River reserved for their use; provided, however, that the provisions of this Article shall not in any manner prejudice any right of the Federal Government under the Commerce Clause of the Constitution of the United States.

EFFECT OF WAIVER OF BREACH

16. The waiver of a breach of any of the provisions of this Contract shall not be deemed to be a waiver of any other provisions hereof or of a subsequent breach of such provision.

RESPONSIBILITY FOR INTERRUPTION

17. In the event the performance, in whole or in part, of the obligations of the respective parties under this contract is hindered, interrupted or prevented by war, strikes, lockouts, fires, act of God, or by other similar or different acts of civil or military authorities, or by any cause beyond the control of the respective parties hereto, whether similar to the causes herein specified or not, such obligations of the respective parties under this contract shall be suspended to the extent and for the time that performance thereof is prevented or affected by such hindrance, interruption or prevention, but due diligence shall be observed by the respective parties hereto, so far as lies in their power, in performing their respective obligations under this contract.

CONTINGENT UPON APPROPRIATIONS

18. If the operation of this contract extends beyond the current fiscal year or exceeds in volume the amount of money made available for its completion through appropriation by Congress, or allotments under the provisions of the Emergency Relief Appropriation Act of 1935, approved April 8, 1935 (49 Stat., 115), it is understood that this contract is made contingent upon Congress making the necessary appropriation or upon the necessary allotments being made under the Emergency Relief Appropriation Act of 1935, for the expenditures hereunder after such current year has expired or after such previous appropriation or allotment has been exhausted. In case such appropriation or allotment as may be necessary to carry out this contract is not made, the Vendors hereby release the United States from all liability due to such appropriation

or allotment not being made.

COVENANT AGAINST CONTINGENT FEES

19. The Vendors warrant that they have not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the United States the right to annul the contract, or in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the contractors for the purpose of securing business.

OFFICIALS NOT BE BENEFIT

20. No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

SUCCESSORS AND ASSIGNS BOUND

21. This contract shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto, by their respective officers thereunto duly authorized, have duly executed these presents in duplicate, all on the day and year first hereinabove written.

THE UNITED STATES OF AMERICA,

By
Secretary of the Interior

Attest:

.....
Secretary

MILLER & LUX INCORPORATED,

By
Vice-President

Attest:

.....
Secretary

GRAVELLY FORD CANAL COMPANY

By
President

(Acknowledgments to be Attached)

In consideration of the benefits to accrue to the undersigned by reason of the provisions of the foregoing contract, the Columbia Canal Company, a corporation, the Firebaugh Canal Company, a corporation, the San Luis Canal Company, a corporation, and The San Joaquin & Kings River Canal & Irrigation Company, Incorporated, a corporation, each for itself and for its successors and assigns, hereby consents and agrees to the foregoing contract, and each of them hereby disclaims all right, title or interest in and to the water, water rights and use of water herein agreed to be sold to the United States, being water and the rights to the use thereof in excess of Schedule One (1) water mentioned in said contract.

The said San Luis Canal Company, Columbia Canal Company, and The San Joaquin & Kings River Canal & Irrigation Company, Incorporated, do and each of them does, hereby grant to the United States and to Miller & Lux Incorporated, the right, privilege and easement to convey, transport through and take from, the canals of said companies waters in the amounts and at the rates that the waters of the San Joaquin River have been historically diverted from said river for use on grass lands now or heretofore owned and possessed by said Miller & Lux Incorporated; said right, privilege and easement to remain in full force and effect until the United States shall have constructed Friant Dam and diversion works and is able to impound therein the water heretofore diverted and used upon said grass lands.

Attest:

.....
Secretary

COLUMBIA CANAL COMPANY

By
President

Attest:

.....
Secretary

FIREBAUGH CANAL COMPANY,

By
President

Attest:

.....
Secretary

SAN LUIS CANAL COMPANY,

By
President

Attest:

.....
Secretary

THE SAN JOAQUIN & KINGS RIVER CANAL
& IRRIGATION COMPANY, INCORPORATED.

By
President